Supreme Court, U. S.
FILED
FEB 11 1977
MICHAEL RODAK, JR., CLERK

In the
Supreme Court of the United States

OCTOBER TERM, 1976

No. 76 1011

WALGREEN LOUISIANA COMPANY, INC.; KRAUSS COMPANY, LTD.; SUCCESSION OF FRANK J. MONTELEONE; WILLIAM A. MONTELEONE, Individually; MAE ATTAWAY, now wife of Oliver Miller; MRS. MAY FELLMAN PARKER; MRS. MAY HEYMANN WOLF; JIMMY HEYMANN, Individually and as Trustee of the JERRY HEYMANN SEPARATE PROPERTY TRUST; and JERRY HEYMANN,
Petitioners

VERSUS

CITY OF NEW ORLEANS, HENRY G. SIMMONS, Director of Finance; CITY OF NEW ORLEANS, CLAUDE J. MAUBERRET, JR., Assessor; LOUISIANA TAX COMMISSION; C. GORDON JOHNSON; ROBERT C. BRAODHURST; and MRS. BLANCHE R. LONG; STATE OF LOUISIANA and ORLEANS LEVEE BOARD,
Respondents

OPPOSITION TO WRIT OF CERTIORARI TO THE SUPREME COURT FOR THE STATE OF LOUISIANA

PHILIP S. BROOKS
CITY ATTORNEY

LEE R. MILLER, JR.
ASSISTANT CITY ATTORNEY
Room 2W23, City Hall
New Orleans, Louisiana 70112
504-586-4653

Attorneys for City of New Orleans and Henry G. Simmons Director of Finance for the City of New Orleans

ROBERT L. DANNER, JR.
Assistant Attorney General
State of Louisiana
2-3-4 Loyola Avenue
New Orleans, Louisiana 70112
504-427-8371

Attorney for Louisiana Tax Commission and Its Individual Members

GASPER J. SCHIRO
1123 First National Bank of Commerce Bldg.
New Orleans, Louisiana 70112
504-588-9053

Attorney for Claude J. Mauberret, Jr., Assessor, Second Municipal District

RICHARD J. McGINITY
1649 First National Bank of Commerce Bldg.
New Orleans, Louisiana 70112
504-581-5225

Attorney for Orleans Levee Board

A B Letter Service, Inc., 327 Chartres St., New Orleans, La. (504) 581-5555

INDEX

	PAGE NO.
Opinions Below	1
Statement of the Case	1
Argument	5
Conclusion	11
Certificate of Service	13

TABLE OF AUTHORITIES

PAGE NO.

CASES:

Charleston Federal Savings & Loan Assn. v. Alderson, 324 U.S. 182, 65 S. Ct. 624, 89 L.Ed. 857 (1945) 10

Citizens Committee for Fair Property Taxation v. Warner, 127 Colo. 121, 254 P.2d 1005 (1953) 8

Corkonen v. Williams, 458 P.2d 280 (1973) 8

Cumberland Coal Co. v. Board of Revision, 284 U.S. 23, 52 S.Ct. 48, 76 L. Ed. 146 (1931) 10

Hamilton v. Adkins, 250 Ala. 557, 35 So. 2d 183 (1948) cert. den. 355 U.S. 861 8

Louisville & Nashville R.R. Co. v. Public Service Comm. of Tenn., 389 F.2d 247 (6th Cir. 1968) 10

May Department Stores Co. v. State Tax Commission, 308 S.W. 2d 748 (Mo. 1955) 8

Morrison v. Rutherford, 83 Wash. 2d 153, 516 P.2d 1036 (1973) 8

TABLE OF AUTHORITIES (Continued)

PAGE NO.

Newport Mining Co. v. Ironwood, 185 Mich. 668, 152 N.W. 1088 (1915) 8

Probst v. City of New Orleans, 337 So.2d 1081 (1976) 5, 7

Rowley v. Chicago & Northwest Railway, 293 U.S. 102, 111, 55 S.Ct. 55, 59, 79 L.Ed. 222 (1934) 10, 11

Sioux City Bridge Company v. Dakota County, 260 U.S. 441, 43 S.Ct. 190, 67 L.Ed. 340 (1923) 9

Skinner v. New Mexico State Tax Commission, 66 N.M. 221, 345 P.2d 750 (1959) 8

Southland Mall Inc. v. Garner, 455 F.2d 887, (6th Cir. 1972) 9

Sunday Lake Iron Co. v. Township of Wakefield, 247 U.S. 350, 38 S.Ct. 495, 62 L.Ed. 1154 (1918) 7, 8

Union Sulphur Co. v. Reid, 271 F. 978, (W.D. La. 1920) 8

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1976

WALGREEN LOUISIANA COMPANY, ET AL.

Petitioners

VERSUS

CITY OF NEW ORLEANS, ET AL.,

Respondents

OPPOSITION TO WRIT OF CERTIORARI TO THE SUPREME COURT FOR THE STATE OF LOUISIANA

Respondents, City of New Orleans, et al, respectfully pray that the Petition for Writ of Certiorari filed herein by the Petitioners in the above captioned matter be denied.

OPINIONS BELOW

The opinions of the Louisiana Courts of Appellate Jurisdiction as set out in the Petition herein of Petitioners.

STATEMENT OF THE CASE

Petitioners herein are owners or lessees of immovable property located in the City of New Orleans. They are a portion of the plaintiffs who paid ad valorem taxes under protest and who then brought suit to contest the increase in the assessment on their respective property and for a refund of the increase in the taxes paid under protest. The claim of petitioners herein was consolidated with another claim of

other plaintiffs after both cases were on appeal in the Louisiana Fourth Circuit Court of Appeal. The cases remained consolidated for argument in the Louisiana Supreme Court.

Petitioners herein have their commercial property located in the Second Municipal District of the City of New Orleans. The commercial property of the other plaintiffs in the consolidated hearings before the Louisiana Appellate Courts is in the First Municipal District of the City of New Orleans. The companion case to that of petitioners herein was commenced for a refund of 1973 ad valorem taxes and the claim of petitioners was for a refund of 1974 ad valorem taxes.

Petitioners have also sought refund of the increase of ad valorem taxes paid since the commencement of their litigation which now includes the ad valorem taxes for 1977.

The City of New Orleans is divided into seven municipal districts, each district having its own assessor. The assessments of each district are subject to review by the Board of Review for the Parish of Orleans (City of New Orleans). This Board, after its review and hearing, makes recommendations regarding the ad valorem taxes in the Parish of Orleans (City of New Orleans) to the Louisiana Tax Commission which has the duty to actually fix the value of all taxable property, not only in Orleans Parish (City of New Orleans), but the entire State of Louisiana.

The records in this case and its companion case *(Cliff Probst vs. City of New Orleans, et al)* consist of various exhibits, stipulations and testimony. The records reflect the following facts as found by the Louisiana Supreme Court in its opinion.

In 1971 the Board of Review formed a committee to develop methods of equalizing assessments throughout the City and it was determined that revaluation should be attempted on land values only because of the difficulty in appraising improvements. A well defined geographical area (referred to as the Central Business District or the CBD throughout records in both cases) was selected as the first to be revalued by a team of independent real estate appraisers to be appointed by the Real Estate Board.

The Central Business District was a beginning point because that area contains the greatest concentration of businesses in the City of New Orleans and is located in the heart of the City. Canal Street, the largest street in New Orleans, extends along the Central Business District dividing the First and Second Municipal District bounds.

All the land values in the CBD were appraised including those in the First Municipal District and those seventeen blocks of the Second Municipal District in the CBD. The appraisals were done by independent real estate appraisers. The Board also dealt with the valuation and equalization of vacant land in the Fifth Municipal District in the area known as the Lower Coast of Algiers, which is an area across the Mississippi River from the main portion of the City and is basically undeveloped.

The 1972 meeting of the Board of Review was advertised and property owners were notified of the hearing. The Board depended upon the cooperation of the individual assessor and, because of the objections of the assessor of the Second Municipal District, the Board postponed the revaluation of the CBD property in his District. The assessor of the Fifth Municipal District accepted the recommendations of the

Board and the vacant property on the Lower Coast was revalued and an ad valorem tax was placed on this property at twenty (20%) percent of its value.

The 1972 hearings were held on the CBD land values in the First Municipal District and the Board adopted the revaluations referred to by the Court in the decision of the Louisiana Supreme Court. The recommendations as to value of the land and the percentage of value to be used in the ad valorem tax in this area were approved by the Louisiana Tax Commission.

In 1973 the same procedure was followed for the CBD property in the Second Municipal District wherein the property of the petitioners herein is located. The same percentage of value was used in the Second District as was used in the First District. In 1974 the Board dealt with land values in a portion of the Third Municipal District and used the same procedure with regards establishing values and the actual hearings and review of the values. The percentage of value to be used was changed in the 1974 recommendation to the Louisiana Tax Commission but the Commission rejected the recommendation of the Board and used the same percentage as used in 1972 on the vacant property in the Fifth Municipal District. The Louisiana Tax Commission in 1974 also reviewed and reassessed property owned by the public utilities located in Orleans Parish in 1974.

By the end of 1974 the Board of Reviewers had adopted a program for revaluation of all lands in the City of New Orleans. All assessments on vacant property in Orleans Parish were to be equalized in 1975. In 1976 assessments for land zoned for various industrial uses were to be equalized, to be followed in 1977 for land zoned for commercial uses, for shopping centers, neighborhood businesses, medical services

and general office districts. Revaluation and equalization were to be completed in 1978, including land and improvements, residential areas and specially zoned historic districts. Consistently, it should be noted that the 1974 Constitution of Louisiana, which was approved by the voting majority of the state, included a requirement that all land be revaluated on an equal basis by the year 1978.

No complaint is made in either of the companion cases that any assessment is based on an appraisal in excess of market value, or that the appraisals lacked such a uniform relationship to actual value that they were, for that reason, discriminatory. In the First Municipal District approximately eight hundred assessments were increased; about one hundred fifty were reduced; some stayed the same. In the Second Municipal District there were one hundred sixty-nine increases; eighty decreases and ten were the same.

ARGUMENT

The petitioners herein argue that this Court should accept certiorari in this particular case because they allege that rights guaranteed to them under the Fourteenth Amendment to the United States Constitution have been violated. The alleged violation consists of the revaluation of a portion of a taxing district and then the application of a percentage of value in said portion that is different than in the rest of the district.

The petitioners, however, are met with certain problems in advancing their position. The first problem is that the record in this case and its companion clearly supports the findings of the Louisiana Supreme Court as reported in *Probst v. City of New Orleans*, 337 So. 2d 1081 (1976). Let us look at some of these findings and the law applicable.

The Supreme Court of Louisiana found that the Board of Review had the intention in 1971 to develop methods of revaluation of property in the entire City and that the Board proceeded in a step by step manner from 1971 through 1974 to implement the overall plan of equalization. The Court below felt that the record supported the contention of the respondents that an actual plan existed even before the 1974 adoption of a formal resolution of the Board of Review.

The Louisiana Supreme Court further found that the procedure and plans of the Board of Review was different than, and in fact was in contrast to, the practices of the individual assessors in the districts where the Board had attempted to achieve equality in assessment. The Court found that the practice had been that once all assessors placed a value on the property and received no complaint about the assessment the assessment went unchanged except when the property was sold, improved or demolished. The Louisiana Supreme Court further found that prior to the actions of the Board of Review and the Louisiana Tax Commission that commercial property in the Central Business District was assessed at a percentage of value that ranged from twenty-five (25%) percent to forty (40%) percent of the supposed value.

The Louisiana Supreme Court after a review of the evidence further found that:

> "The Central Business District was the natural place to start. It contained the Superdome and other dramatic developments on Poydras Street, where property values increased greatly. If a developer contemplated buying land, he would be faced with taxation based on the sale price, with the prospect of competition from owners who were taxed on outdated land values. Although

> commercial, business and industrial sites are located from place to place throughout the City, there is no other area which is comparable to the size and concentration of commercial properties in the CBD. The district is surrounded by identifiable boundaries, natural, man-made and legal -- the Mississippi River, the Pontchartrain Expressway elevated approach to the Mississippi River Bridge, the elevated through-the-City route of Interstate Highway 10 above the right-of-way of Claiborne Avenue and the Vieux Carre reaching from the river to Rampart and Iberville." *Probst*, supra, 1083.

The Louisiana Supreme Court found that:

> ". . .the selection of the CBD as the area for beginning a revaluation and equalization program is supported by strong reasons and cannot be characterized as arbitrary or unreasonable discriminatory." *Probst*, supra, 1085.

The law on this type of procedure fully supports the Judgment of the Louisiana Supreme Court.

The attack on the revaluation procedure used by the Board of Review and the Louisiana Tax Commission is limited to the fact that it was not done in the entire City of New Orleans or an entire district within the City at the same time. This attack does not merit a review of the Judgment of the Louisiana Supreme Court since this Court has consistently held otherwise beginning with the decision of *Sunday Lake Iron Co. v. Township of Wakefield*, 247 U.S. 350, 38 S.Ct. 495, 62 L.Ed. 1154 (1918). That case has been followed by

other state and federal cases such as *Union Sulphur Co. v. Reid*, 271 F. 978 (W.D. La. 1920); *May Department Stores Co. v. State Tax Commission*, 308 S.W. 2d 748 (Mo. 1955); *Skinner v. New Mexico State Tax Commission*, 66 N.M. 221, 345 P.2d 750 (1959); *Citizens Committee for Fair Property Taxation vs. Warner*, 127 Colo. 121, 254 P.2d 1005 (1953); *Newport Mining Co. vs. Ironwood*, 185 Mich. 668, 152 N.W. 1088 (1915); *Corkonen v. Williams*, 458 P.2d 280 (1973); *Morrison v. Rutherford*, 83 Wash. 2d 153, 516 P.2d 1036 (1973) and *Hamilton v. Adkins*, 250 Ala. 557, 35 So.2d 183 (1948) cert. den. 355 U.S. 861.

These cases are based on the *Sunday Lake Iron Co.* holding and they stand for the proposition that:

> ". . .if only a part of a taxing district can be revalued in one taxing year, because of limitations of manpower and funds on those charged with assessing, a program of revaluation may start in a reasonably determined portion of the district, even though property in that part might bear a larger portion of the tax burden for a reasonable time until all property is revalued."
> *Probst*, supra, 1084.

The petitioners in this case as well as plaintiffs in other cases attacking assessments or assessment procedures as a violation of the equal protection guarantee of the Fourteenth Amendment to the United States Constitution must do more than show their assessment is not equal to other assessments. It is upon these grounds that petitioners herein would base their contention.

The other contention of the petitioners is that their

rights were violated because the Board of Review and the Louisiana Tax Commission used a percentage of value for their assessments that was different than the percentage of value that had been used by the assessors in fixing ad valorem taxes in the Central Business District.

We have seen that the Louisiana Supreme Court found that the percentage of value used by assessors in the Central Business District prior to the actions of the Board of Review ranged from twenty-five (25%) per cent to forty (40%) percent of the value after the value had been determined by the assessor. The Board of Review and the Tax Commission used a percentage of value of thirty-three and one-third (33 1/3%) percent of value in a uniform and equal manner throughout the Central Business District. No longer was there a different percentage of value used on land values in the Central Business District but a uniform and equal percentage was used. Would this difference in the percentage of value be a violation of the rights of petitioners? The answer must be no.

The petitioners must prove that the assessments or the assessment procedures used for their property resulted in their assessment being unequal to others and that thus they are:

> "a victim of 'intentional and arbitrary discrimination whether occasioned by express terms of a statute or by its improper execution through duly constituted agents.' "
> *Southland Mall Inc. v. Garner*, 455 F.2d 887, (6th Cir. 1972) at 889 citing *Sunday Lake Iron Co. v. Township of Wakefield*, 247 U.S. 350, 352, 38 S. Ct. 495, 62 L.Ed. 1154 (1918); *Sioux City Bridge Company v. Dakota County*, 260 U.S. 441, 43 S.

Ct. 190, 67 L.Ed. 340 (1923); *Cumberland Coal Co. v. Board of Revision*, 284 U.S. 23, 52 S.Ct. 48, 76 L.Ed. 146 (1931); *Charleston Federal Savings & Loan Assn. v. Alderson*, 324 U.S. 182, 65 S.Ct. 624, 89 L.Ed. 857 (1945); *Louisville & Nashville R.R. Co. v. Public Service Comm. of Tenn.*, 389 F.2d 247 (6th Cir. 1968).

This Court has explained the intention that must be found as:

"There must be something that amounts to an intention, or the equivalent of fraudulent purpose, to disregard the fundamental principle of uniformity."
Southland Mall, supra, 889 citing *Rowley vs. Chicago & Northwest Railway*, 293 U.S. 102, 111, 55 S.Ct. 55, 59, 79 L.Ed. 222 (1934).

Have the petitioners met such a test? Again the answer is no since the Louisiana Supreme Court in their opinion in this matter stated:

> ". . .we do not find support in the record for plaintiffs' contention that their property had been singled out for the application of a higher tax ratio than other similarly situated properties. We find no evidence that it was the intention of the Board of Reviewers or the City Council or the Louisiana Tax Commission to apply a higher percentage to the value of CBD property than to similar commercial property outside the CBD when the revaluation was completed.

> "As mentioned before the intention of the Board of Reviewers in 1971 was to develop methods of revaluation of property in the whole city. That their intention was *equalization and not discrimination* is evidenced by their resolutions in September of 1972, expressing the policy to equalize and not increase total assessments in the CBD. It is true that the authorities proceeded in a step-by-step manner, without the formal adoption of a citywide plan until the end of 1974. That plan contemplated the equalization of assessments on all business and commercial property in the city in 1977. (emphasis supplied)
>
> "There is no evidence that a percentage of value would be used in 1977 for the assessment of commercial and business property different from that used for the assessment of property in the CBD." *Probst vs. City of New Orleans, et al.*, supra, at 1086.

Thus instead of finding the type of intention as specified in the *Rowley* case the Louisiana Supreme Court found that the actions of respondents were in good faith and non-discriminatory.

CONCLUSION

The Louisiana Supreme Court fully heard and dealt with the arguments and claims of petitioners. It reviewed the complete record in the case of the petitioners and that in the companion case. It rejected the claim of the petitioners and it is urged by the respondents that the Writ of Certiorari of the petitioners should be denied.

Respectfully submitted,

PHILIP S. BROOKS and
LEE R. MILLER, JR.
Room 2W23, City Hall
New Orleans, Louisiana 70112
504-586-4653
For the City of New Orleans and
Henry G. Simmons,
Director of Finance for the City
of New Orleans

RICHARD J. McGINITY
1649 First National Bank of
Commerce Building
New Orleans, Louisiana 70112
504-581-5225
Attorney for Orleans Levee
Board

ROBERT L. DANNER, JR.
Assistant Attorney General
State of Louisiana
Attorney General's Office
2-3-4 Loyola Avenue
New Orleans, Louisiana 70112
504-527-8371
Attorney for Louisiana Tax
Commission and its Individual
Members

GASPER J. SCHIRO
1123 First National Bank of
Commerce Building
New Orleans, Louisiana 70112
504-588-9053
Attorney for Claude J.
Mauberret, Jr., Assessor,
Second Municipal District

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Opposition to Writ of Certiorari has been served on:

LAW OFFICES OF ARTHUR L. BALLIN

Frank C. Dudenhefer
1121 Carondelet Building
New Orleans, Louisiana
504-523-2155
Attorney for Petitioners

this 11th day of February, 1977.

LEE R. MILLER, JR.